

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 350 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

SHREE RAMDEV SILK MILLS

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Appearance:

MR MANISH R BHATT for Petitioner  
MR KC PATEL for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 30/08/1999

ORAL JUDGEMENT

1. The following question was referred for the  
opinion of this Court :-

"Whether, on the facts and in the circumstances  
of the case, the Tribunal was right in law in  
coming to the conclusion that the amounts paid as

Majuri payments to the partners of the assessee were not disallowable under section 40(b) of the Income-tax Act, 1961."

2. At the time of hearing, our attention was invited to a decision in Income Tax Reference No.241 of 1984, dated September 20, 1991. In the said case, the question which was referred by the Tribunal for the opinion of this Court read as under :-

"Whether, on the facts and in the circumstances of the case, the tribunal was right in law in coming to the conclusion that the amounts paid as Majuri payments to the partners of the assessee firm were not disallowable under section 40(b) of the Income-tax Act, 1961?"

3. Relying on a decision in Commissioner of Income Tax, Baroda v. M/s Yoganand Textiles, 202 I.T.R. 869, the question was answered in favour of the revenue and against the assessee. Accordingly in I.T.R. No. 241 of 1984 also, the question was answered in favour of the revenue and against the assessee.

In the last paragraph of the order, however, the Court stated;

"We may, however, make it clear that, as in the case of CIT vs. M/s Yoganand Textiles, the question, whether expenditure alleged to have been incurred by the partner who have been paid the amounts in question, is genuine or not, will have to be examined since neither the Commissioner of Income Tax nor the Income Tax Appellate Tribunal has examined this question. The question referred to us has been answered as stated above subject to this clarification."

4. Since the point is concluded by a decision of this Court, in the instant case also, the question must be answered in favour of the revenue and against the assessee. It is, however, made clear, as has been made clear in the case of Yoganand Textiles, that the question whether the expenditure alleged to have been incurred by the partners who have been paid the amounts in question is genuine or not, will have to be examined since the said question was neither examined by the Commissioner of Income Tax nor by the Income Tax Appellate Tribunal.

5. Reference is disposed of accordingly. In the facts and circumstances of the case, no order as to

costs.

[ C.K. THAKKAR, J. ]

[ A.L. DAVE, J. ]

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